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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALEXIS CASTILLO,

Plaintiff,

No. C 05-00284 WHA

v.

CITY AND COUNTY OF SAN
FRANCISCO and PERRY HOLLIS,

Defendants.

FINAL JURY INSTRUCTIONS

1. 1

2 Members of the jury, now that you have heard all the evidence and the arguments of the
3 attorneys, it is my duty to instruct you on the law which applies to this case. A copy of these
4 instructions will be available in the jury room for you to consult if you find it necessary.

2. 5

6 It is your duty to find the facts from all the evidence in the case. To those facts you will
7 apply the law as I give it to you. You must follow the law as I give it to you whether you agree
8 with it or not. You must not be influenced by any personal likes or dislikes, opinions,
9 prejudices, or sympathy. That means that you must decide the case solely on the evidence
10 before you. You will recall that you took an oath promising to do so at the beginning of the
11 case.

3. 12

13 In following my instructions, you must follow all of them and not single out some and
14 ignore others; they are all equally important. You must not read into these instructions or into
15 anything the court may have said or done any suggestion as to what verdict you should return
16 — that is a matter entirely up to you.

4. 17

18 The evidence from which you are to decide what the facts are consists of:

- 19 (1) The sworn testimony of any witness;
20 (2) The exhibits which have been received into evidence; and
21 (3) Any facts to which the lawyers have agreed or stipulated.

5. 22

23 In reaching your verdict, you may consider only the testimony and exhibits received into
24 evidence. Certain things are not evidence, and you may not consider them in deciding what the
25 facts are. I will list them for you:

- 26 (1) Arguments and statements by lawyers are not evidence. The
27 lawyers are not witnesses. What they have said in their opening
28 statements, closing arguments, and at other times is intended to help

1 In considering the testimony of any witness, you may take into account:

- 2 (1) The opportunity and ability of the witness to see or hear or know
3 the things testified to;
4 (2) The witness's memory;
5 (3) The witness's manner while testifying;
6 (4) The witness's interest in the outcome of the case and any bias or
7 prejudice;
8 (5) Whether other evidence contradicted the witness's testimony;
9 (6) The reasonableness of the witness's testimony in light of all the
10 evidence; and
11 (7) Any other factors that bear on believability.

12 The weight of the evidence as to a fact does not necessarily depend on the number of
13 witnesses who testify.

14 8.

15 You have heard testimony from persons who, because of education or experience, are
16 permitted to state opinions and the reasons for those opinions. Opinion testimony should be
17 judged just like any other testimony. You may accept it or reject it, and give it as much weight
18 as you think it deserves, considering the witness's education and experience, the reasons given
19 for the opinion, and all the other evidence in the case.

20 9.

21 In examining an expert witness, counsel may ask a hypothetical question. This is a
22 question in which the witness is asked to assume the truth of a set of facts, and to give an opinion
23 based on that assumption. In permitting this type of question, the court does not rule, and does
24 not necessarily find that all the assumed facts have been proved. It only determines that those
25 assumed facts are within the possible range of the evidence. It is for you to decide from all the
26 evidence whether or not the facts assumed in a hypothetical question have been proved. If you
27 should decide that any assumption in a question has not been proved, you are to determine the
28

1 effect of that failure of proof on the value and weight of the expert opinion based on the assumed
2 facts.

3 10.

4 Certain charts and summaries that have not been received in evidence have been shown
5 to you in order to help explain evidence in the case. They are not themselves evidence or proof
6 of any facts. If they do not correctly reflect the facts or figures shown by the evidence in the
7 case, you should disregard these charts and summaries and determine the facts from the
8 underlying evidence.

9 11.

10 You may consider whether a party failed to explain or deny some unfavorable evidence.
11 Failure to explain or to deny unfavorable evidence may suggest that the evidence is true.

12 12.

13 Discrepancies in a witness's testimony or between a witness's testimony and that of other
14 witnesses do not necessarily mean that any witness should be discredited. Failure of recollection
15 is common. Innocent misrecollection is not uncommon. Two persons witnessing an incident or
16 a transaction often will see or hear it differently. You should consider whether a discrepancy
17 pertains to an important matter or only to something trivial.

18 13.

19 A witness false in one part of his testimony is to be distrusted in others. You may reject
20 the entire testimony of a witness who willfully has testified falsely on a material point, unless,
21 from all the evidence, you believe that the probability of truth favors his testimony in other
22 particulars.

23 14.

24 When a party has the burden of proof on any matter by a preponderance of the evidence,
25 it means you must be persuaded by the evidence that the matter is more probably true than not
26 true. You should base your decision on all of the evidence, regardless of which party presented
27 it.

1 15.

2 On any claim, if you find that each of the elements on which plaintiff Castillo has the
3 burden of proof has been proved, your verdict should be for him on that claim.

4 16.

5 In this case, the Court has already ruled that the arrest itself was lawful. You must accept
6 that conclusion as a given. The main issue for you to decide is whether excessive force was used
7 in carrying out the arrest, for even when a lawful arrest is made, officers may not use excessive
8 force.

9 17.

10 Plaintiff Alexis Castillo claims defendant Officer Perry Hollis used excessive force in
11 making a lawful arrest, and deprived him of the Fourth Amendment constitutional right to be
12 free from an unreasonable seizure. The application of handcuffs by a police officer constitutes
13 the use of force and the use of handcuffs so as to cause injury may constitute excessive force.

14 A law enforcement officer has the right to use such force as is reasonably necessary
15 under the circumstances to make a lawful arrest. An unreasonable seizure occurs when a law
16 enforcement officer uses excessive force in making a lawful arrest. In deciding whether
17 excessive force was used, you should consider the totality of the circumstances at the time. The
18 reasonableness of a particular use of force must be judged objectively from the information
19 available at the time from the perspective of a reasonable officer on the scene, rather than with
20 the 20/20 vision of hindsight. Police officers are not necessarily required to use the least
21 intrusive alternative but they are required to choose an alternative that is within a reasonable
22 range of conduct based on the facts and circumstances.

23 Whether force is reasonably necessary or excessive is measured by the force a reasonable
24 and prudent law enforcement officer would use under the circumstances. Some of the things you
25 may want to consider in determining whether Officer Hollis used excessive force are the severity
26 of the crime at issue, whether plaintiff posed a reasonable threat to the safety of the officer or
27 others, any medical issues known to the officers, and whether plaintiff was actively resisting
28 detention or attempting to escape.

18.

On plaintiff Castillo's excessive-force claim against Officer Hollis, plaintiff has the burden of proving each of the following elements by a preponderance of the evidence:

- (1) The acts or omissions of Officer Hollis were intentional;
- (2) He acted under color of law; and
- (3) The acts or omissions of Officer Hollis were the cause of the deprivation of plaintiff Castillo's rights protected by the Constitution or laws of the United States.

If you find that each of the elements on which plaintiff has the burden of proof has been proved, your verdict should be for plaintiff. If, on the other hand, plaintiff has failed to prove one or more of these elements, your verdict should be for defendant. The parties have stipulated that defendant Officer Hollis acted under color of law.

19.

The conduct of a defendant is a cause of harm to plaintiff if it is a substantial factor in causing the harm. A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It does not have to be the only cause of the harm.

20.

In this case, plaintiff Castillo has also sued the City and County of San Francisco. In order to establish liability against defendant City and County of San Francisco, plaintiff Castillo must prove by a preponderance of the evidence that he was a victim of excessive force in violation of the Fourth Amendment by reason of an official policy of the City and County of San Francisco. If you find that there was no excessive force, then you must find for the City and County of San Francisco. On the other hand, if you find that there was excessive force in violation of the Fourth Amendment, then you must determine whether plaintiff has proven by a preponderance of the evidence that the Fourth Amendment violation was a result of an official policy of the City and County of San Francisco.

21.

“Official policy” means:

- (1) A rule or regulation promulgated, adopted or ratified by the governmental entity’s legislative body; or
- (2) A policy statement or decision that is officially made by the city and county’s policy-making official; or
- (3) A custom that is a permanent, widespread, well-settled practice that constitutes a standard operating procedure of the city and county; or
- (4) An act or omission ratified by the city and county’s policy-making official.

22.

It is the duty of the Court to instruct you about the measure of damages. By instructing you on damages, the Court does not mean to suggest for which party your verdict should be rendered.

If you find for plaintiff Castillo, you must determine his damages. He has the burden of proving damages by a preponderance of the evidence. Damages means the amount of money which will reasonably and fairly compensate him for any injury you find was caused by defendants. You should consider the following:

- (1) The nature and extent of the injuries;
- (2) The disability, disfigurement, loss of enjoyment of life experienced and which with reasonable probability will be experienced in the future;
- (3) The mental, physical, emotional pain and suffering experienced and which with reasonable probability will be experienced in the future;
- (4) The reasonable value of necessary medical care, treatment, and services received to the present time; provided, however, that if defendants have shown that a lesser amount was accepted as

1 payment in full by the medical-care providers, then no more than
2 the lesser amount;

3 (5) The reasonable value of necessary medical care, treatment, and
4 services which with reasonable probability will be required in the
5 future; and

6 (6) The reasonable value of wages, earnings, earning capacity, salaries,
7 employment and employment opportunities lost before plaintiff
8 returned to work on January 26, 2005.

9 23.

10 Plaintiff is not entitled to damages for any physical condition that he had before the
11 incident in question. However, if plaintiff had a physical condition that was made worse by
12 defendants' wrongful conduct, you must award him damages that will reasonably and fairly
13 compensate him for the effect on that condition.

14 24.

15 Plaintiff Castillo has the burden of proving damages by a preponderance of the evidence,
16 and it is for you to determine what damages, if any, have been proved. Your award must be
17 based upon evidence and not upon speculation, guesswork or conjecture.

18 25.

19 Plaintiff Castillo has a duty to use reasonable efforts to mitigate damages. To mitigate
20 damages means to avoid or reduce damages. Defendants have the burden of proving by a
21 preponderance of the evidence:

22 (1) That plaintiff Castillo failed to use reasonable efforts to mitigate damages; and

23 (2) The amount by which damages would have been mitigated.

24 26.

25 You shall award damages in an amount that fully compensates plaintiff for damages in
26 accordance with instructions from the court. You shall not speculate or consider other possible
27 sources of benefit that plaintiff may have received. After you have returned your verdict the
28 court will make whatever adjustments in this regard.

27.

The law which applies to this case authorizes an award of nominal damages. If you find for plaintiff Castillo but you find that he has failed to prove damages as defined in these instructions, you must award nominal damages. Nominal damages may not exceed one dollar.

28.

When you begin your deliberations, you should elect one member of the jury as your presiding juror. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. Do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

29.

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by the notes.

30.

As I noted before the trial began, when you retire to the jury room to deliberate, you will have with you the following things:

- (1) All of the exhibits received into evidence;
- (2) An index of the exhibits if the lawyers are able to stipulate as to its form;
- (3) A work copy of these jury instructions for each of you;

1 (4) A work copy of the verdict form for each of you; and

2 (5) An official verdict form.

3 When you recess at the end of a day, please place your work materials in the brown
4 envelope provided and cover up any easels with your work notes so that if my staff needs to go
5 into the jury room, they will not even inadvertently see any of your work in progress.

6 31.

7 If it becomes necessary during your deliberations to communicate with me, you may send
8 a note through the marshal, signed by your presiding juror or by one or more members of the
9 jury. No member of the jury should ever attempt to communicate with me except by a signed
10 writing; and I will communicate with any member of the jury on anything concerning the case
11 only in writing, or here in open court. If you send out a question, I will consult with the parties
12 before answering it, which may take some time. You may continue your deliberations while
13 waiting for the answer to any question. Remember that you are not to tell anyone — including
14 me — how the jury stands, numerically or otherwise, until after you have reached a unanimous
15 verdict or have been discharged. Do not disclose any vote count in any note to the Court.

16 32.

17 Shortly after you retire to begin your deliberations, please send out a note signed by your
18 foreperson advising as what your hours for today will be so that counsel can be sure to be present
19 at all times when you are in session in case they are needed and so the Court can do likewise.

20 You may only deliberate when all of you are together. This means, for instance, that in
21 the mornings before everyone has arrived, or when someone steps out of the jury room to go to
22 the restroom, you may not discuss the case. As well, the admonition that you are not to speak to
23 anyone outside the jury room about this case still applies during your deliberations.

24 33.

25 After you have reached a unanimous agreement on a verdict, your foreperson will fill in
26 the date, and sign the verdict form and advise the Court that you have reached a verdict. The
27 foreperson should hold onto the filled-in verdict form and bring it into the courtroom when the
28

1 jury returns the verdict. Thank you for your careful attention. The case is now in your hands.
2 You may now retire to the jury room and begin your deliberations.

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6 Dated: March 13, 2006.

7 WILLIAM ALSUP
8 UNITED STATES DISTRICT JUDGE
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